

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL CEBZANOV and U.S. POSTAL SERVICE,
BUSTELTON STATION, Philadelphia, PA

*Docket No. 99-2315; Submitted on the Record;
Issued January 19, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty as alleged.

On September 5, 1997 appellant, then a 45-year-old letter carrier, filed a notice of occupational disease alleging that he sustained anxiety and depression beginning on June 30, 1997. He alleged a pattern of harassment and excessive supervision by station manager Eric Coleman and other supervisors, with confrontations on June 18, 30 and August 13, 1997, as well as stress from being held to unreasonable production standards and being given insufficient time to complete his work, in particular on August 13, 1997.¹ Appellant stopped work on August 13, 1997 and did not return.²

Appellant alleged that, on June 18, 1997, supervisor Keith Bolling went inside his postal vehicle and went through the mail, stating that there was a problem with the keys and that there was "somebody who might want to plant something in [appellant's] vehicle." Appellant became "nervous and frightened."

Regarding June 30, 1997, appellant alleged that Mr. Coleman watched him for 15 to 20 minutes following the issuance of a letter of warning. Appellant noted that he had a "lot" of mail on June 30, 1997 and his route contained 600 to 700 deliveries, including a housing development with high turnover. Mr. Coleman allegedly stated that appellant was to do things Mr. Coleman's way while standing a few feet behind appellant and remained there for 30 minutes, speaking to

¹ Appellant made substantially similar allegations in a January 15, 1998 statement and at the February 9, 1999 hearing.

² In a December 12, 1997 letter, the Office advised appellant of the type of medical and factual evidence needed to establish his claim.

appellant and watching him work.³ Appellant stated that Mr. Coleman criticized him for going through the “pink cards” and gave him insufficient time to finish preparing his route. Mr. Coleman stated that, if appellant failed to perform his duties in a specified manner, it was “out the door.” He alleged that Mr. Coleman was physically intimidating, clenching his fists and gesturing. Appellant alleged that Mr. Coleman took mail out of his hands and arranged it out of block order. Appellant felt sick and wanted to go home, whereupon Mr. Coleman “threw the mail down” on the case, “jumped ... inches from [appellant’s] face,” stated that he felt “[n]ervous and intimidated,” Appellant went home and called his physician, Dr. Geld, who prescribed medication and psychotherapy. Appellant was away from work until July 8, 1997.

Regarding August 13, 1997, appellant alleged that he had insufficient time to prepare and complete his mail delivery due to an unusually high volume of 30 catalogs with separate address cards and having 30 to 40 parcels rather than the usual 10 due to a United Parcel Service (UPS) strike. Supervisors Bolling and Coleman denied appellant’s request for two-and-a-half hours additional time to complete his route.⁴ Appellant asserted that Mr. Coleman “leaned into the case and ... whispered threats” including, “Dude you are going to give me a good job today ... or else.” Mr. Coleman threatened to suspend or fire appellant, or remove him to an undesirable position. Appellant alleged that Mr. Coleman was in very close physical proximity to him and that he had to back away to keep Mr. Coleman from touching him. Appellant stated that he was frightened and feared for his safety, requested a meeting with a union steward and at that point Mr. Coleman granted him one hour and fifteen minutes of assistance. Despite this assistance, appellant was unable to complete delivery within his 8-hour shift and returned to the station with 45 minutes of mail left.

Appellant submitted witness statements from his coworkers regarding the August 13, 1997 incident. In a January 8, 1998 letter, Fran Hennessy, a union steward, stated that on August 13, 1997 she informed Mr. Coleman that the employing establishment’s figures for mail volume were outdated and that appellant would thus require the two and a half hours he requested to complete his work. Ms. Hennessy stated that Mr. Coleman was “both intimidating and threatening. In a January 1998 statement, Frances Cursio, stated that, on August 13, 1997, Mr. Coleman went through appellant’s cased mail and was speaking “very animated[ly]” to appellant, who was “red in the face.” In a January 1998 statement, Wayne Paro, stated that, on August 13, 1997, Mr. Coleman watched appellant case mail and at time the two were “face to face, with their faces only inches apart,” and that Mr. Coleman’s voice was much louder than appellant’s although he could not hear what was said. In a January 1998 statement, Ralph Cerrullo recalled that, on August 13, 1997, Mr. Coleman stood so close to appellant that he interfered with appellant casing mail and that Mr. Coleman did not move when appellant asked him to step back. In a January 15, 1998 statement, Lawrence Edels noted that, on August 13, 1997, Mr. Coleman stood very close behind appellant while he cased mail, and that appellant was very upset afterward.

³ In a January 1998 statement, Ralph Cerrullo, Jr., one of appellant’s coworkers, noted that on June 30, 1997, Mr. Coleman stood close behind appellant while he was casing mail and peered at him from behind postal equipment.

⁴ An August 13, 1997 slip shows a request for half an hour union times and two and a half hours to finish casing mail and handling parcels. “1.25 AUX” approved.

The employing establishment submitted responses to appellant's allegations. In September 30, 1997 and January 12 and 31, 1998 letters, Mr. Coleman stated that, on June 30, 1997, appellant received a letter of warning for "poor job performance" and "time wasting practices." Mr. Coleman asserted that appellant's immediate supervisors "C. Ferebee and N[oreen] McAneny continued to observe [appellant's] job performance to determine the training needed," particularly in methods used to pull down his route from the mail case. Mr. Coleman recalled that, on August 13, 1997, supervisors C. Ferebee and "K. Bolling informed [him] that" appellant was once again using improper work methods, whereupon Mr. Coleman observed appellant's performance and then met with appellant and union stewards. "Corrective action of a seven-day suspension was proposed" for failure to meet position requirements. Mr. Coleman stated that appellant averaged casing four to five feet of mail in three to four hours, whereas he was to case five to six feet of mail and that his street time was unsatisfactorily long. Mr. Coleman stated that he met with appellant and union officials to discuss appellant's performance and methods for improvement, but that appellant was uncooperative.

By decision dated June 29, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish a compensable factor of employment. Appellant disagreed with this decision and in a July 24, 1998 letter requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held February 9, 1999.

In a March 10, 1999 statement, Patrick Canning, an employing establishment manager, explained that, while supervisors did not "normally check ... inside" postal vehicles, appellant's poor performance necessitated such close supervision. Mr. Canning asserted that appellant's route was difficult but that he received higher pay as a result and that he was given the appropriate, standard time to complete his workload on and after June 30, 1997.⁵

By decision dated and finalized April 1, 1999, the Office hearing representative affirmed the Office's July 24, 1998 decision, finding that appellant failed to establish a compensable factor of employment.

The Board finds that the case is not in posture for a decision.

Where a claimed disability results from an employee's emotional reaction to his regular or specially assigned duties or to an imposed employment requirement, the disability comes within the coverage of the Federal Employees' Compensation Act.⁶ When working conditions are alleged as factors in causing an emotional condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are

⁵ Appellant submitted comments to Mr. Canning's March 10, 1999 statement accompanying an April 2, 1999 letter. The letter and accompanying documentation were date punched received by the Office on April 13, 1999, 12 days following the issuance of the Office hearing representative's April 1, 1999 decision. The Board, however, cannot consider this evidence, since the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).

⁶ *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁷ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Where the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁸

Appellant alleged that stress from meeting production standards caused or contributed to his emotional condition and that he was given insufficient time to complete his work. The Board has held that an employee's emotional reaction to his regular or specially assigned duties may be a compensable factor of employment.⁹ Also, the Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.¹⁰

Appellant alleged that, on June 30, 1997, Mr. Coleman gave him insufficient time to finish preparing his mail for the route. On August 13, 1997 appellant had three to four times the normal volume of parcels to process due to a UPS strike, in addition to a catalog mailing. Appellant requested two and a half hours additional time, but Mr. Coleman only granted an extra hour and fifteen minutes to process the increased volume of mail.

Appellant submitted evidence corroborating the need for additional time on August 13, 1997. Ms. Hennessy, coworker and union steward, noted in a January 8, 1998 statement that on August 13, 1997 she informed Mr. Coleman that his mail volume figures were outdated and that appellant needed the extra two and a half hours to process the increased volume of mail. The Board finds that appellant has established a compensable factor related to his work duties.

Appellant has also alleged harassment by Mr. Coleman, with confrontations on June 30 and August 13, 1997. He alleged that, on June 30, 1997, Mr. Coleman stood a few feet behind him for 30 minutes, watching him case mail and stated that, if appellant failed to perform his duties in a specified manner, it was "out the door." He alleged that Mr. Coleman physically intimidated him by clenching his fists, gesturing, taking mail out of his hands and arranging it out of order, throwing mail down on the case and jumping "inches from [appellant's] face." Appellant alleged that, on August 13, 1997, Mr. Coleman "leaned into [appellant's mail] case and ... whispered threats," including, "Dude you are going to give me a good job today ... or else" and that appellant would be suspended, fired or removed to an undesirable position. Appellant alleged that Mr. Coleman was so close that he had to back away to keep Mr. Coleman

⁷ *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

⁸ *Id.*

⁹ *See Lillian Cutler*, *supra* note 6.

¹⁰ *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984).

from touching him. Appellant stated that Mr. Coleman's remarks and physical intimidation caused him to fear for his safety.

Appellant also submitted January 1998 witness statements.

However, the Board finds that the statements are not sufficient to establish harassment or threats by appellant's supervisor. The witness statements are general in nature and not specifically detailed to support appellant's allegations.

The Board finds that Mr. Coleman's actions did not constitute harassment.

As appellant has established a compensable employment factor the case will be remanded to the Office for further development. Following any other development the Office may deem necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated and finalized April 1, 1999 is hereby set aside and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
January 19, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member